

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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MARISOL SOTO,

Plaintiff,

**AMENDED COMPLAINT AND
DEMAND FOR A JURY TRIAL**

-v-

Index No. 14CV1329 (RJD)(LB)

THE CITY OF NEW YORK, New York City Police
Department Sergeant EDDIE TSANG, Police Officer
("P.O.") HAILYN OLIVARES (Shield No. 16967)
P.O. ANDY JEAN-PIERRE (Shield No. 7887), and
P.O. JOHN DOE's 1-4 in their individual capacities,

Defendants.
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Plaintiff MARISOL SOTO, through her attorney DAVID B. RANKIN of Rankin & Taylor, PLLC as and for her amended complaint, does hereby state and allege:

PRELIMINARY STATEMENT

1. This is a civil rights action brought to vindicate plaintiff's rights under the First, Fourth, and Fourteenth Amendments of the Constitution of the United States, through the Civil Rights Act of 1871, *as amended*, codified as 42 U.S.C. § 1983.
2. Plaintiff MARISOL SOTO's rights were violated when officers of the NEW YORK CITY POLICE DEPARTMENT ("NYPD") unconstitutionally and without any legal basis used unlawful force against her. By reason of defendants' actions, including their unreasonable and unlawful seizure of her person, she was deprived of her constitutional rights.
3. Plaintiff seeks an award of compensatory and punitive damages and attorneys' fees.

JURISDICTION AND VENUE

4. This Court has subject matter jurisdiction over federal claims pursuant to 28 U.S.C. §§ 1331, 1343(a)(3-4). This action is brought pursuant to 42 U.S.C. §§ 1983 and 1988 for violations of the Fourth, and Fourteenth Amendments to the Constitution of the United States.
5. Venue is proper pursuant to 28 U.S.C. § 1391(b)(2) in that plaintiff's claim arose in the Eastern District of New York.
6. An award of costs and attorneys' fees is authorized pursuant to 42 U.S.C. §1988.

PARTIES

7. Plaintiff MARISOL SOTO ("SOTO") was at all times relevant to this action a resident of the County of Kings in the State of New York.
8. Defendant THE CITY OF NEW YORK ("CITY") is a municipal entity created and authorized under the laws of the State of New York. It is authorized by law to maintain a police department, which acts as its agent in the area of law enforcement and for which it is ultimately responsible. Defendant CITY assumes the risks incidental to the maintenance of a police force and the employment of police officers as said risks attach to the public consumers of the services provided by the NYPD.
9. New York City Police Department Sergeant ("Sgt.") EDDIE TSANG ("TSANG"), Police Officer ("P.O.") HAILYN OLIVARES ("OLIVARES") (Shield No. 16967), P.O. ANDY JEAN-PIERRE ("JEAN-PIERRE") (Shield No. 7887), and P.O. JOHN DOE's 1-4, hereinafter the ("individual defendants,") are and were at all times relevant herein, officers, employees and agents of the NYPD.
10. The individual defendants are being sued herein in their individual capacities.

11. At all times relevant herein, the individual defendants were acting under color of state law in the course and scope of their duties and functions as agents, servants, employees and officers of NYPD and otherwise performed and engaged in conduct incidental to the performance of their lawful functions in the course of their duties. They were acting for and on behalf of the NYPD at all times relevant herein, with the power and authority vested in them as officers, agents and employees of the NYPD and incidental to the lawful pursuit of their duties as officers, employees and agents of the NYPD.
12. The true name and shield numbers of defendants P.O. JOHN DOE's 1-4 is are not currently known to the plaintiff.¹ However, P.O. JOHN DOE's 1-4 were employees or agents of the NYPD on the date of the incident. Accordingly, they are entitled to representation in this action by the New York City Law Department ("Law Department") upon their request, pursuant to New York State General Municipal Law § 50-k. The Law Department, then, is hereby put on notice (a) that plaintiff intends to name said officers as defendants in an amended pleading once the true name and shield numbers of said defendants become known and (b) that the Law Department should immediately begin preparing their defense in this action.

STATEMENT OF FACTS

13. Ms. SOTO was unlawfully arrested and maliciously injured by Sgt. EDDIE TSANG, P.O. HAILYN OLIVARES, and P.O. JOHN DOE's 1-4 in front of 446 47th Street in the County of KINGS and State of New York.
14. On November 9, 2012, at approximately 4:30 P.M. Ms. SOTO arrived at her Mother's home, located at 446 47th Street.

¹ By identifying said defendants as "John Doe" or "Richard Roe," plaintiff is making no representations as to the gender of said defendants.

15. Ms. SOTO observed NYPD officers, including Sgt. EDDIE TSANG, P.O. HAILYN OLIVARES and P.O. JOHN DOES 1-4 in front of her mother's residence.
16. As Ms. SOTO approached her mother's apartment she was grabbed by the individual defendants, who then shoved her, causing pain and injury.
17. P.O. JEAN-PIERRE unnecessarily threw Ms. SOTO against a parked vehicle, causing her pain and injury.
18. The individual defendants handcuffed Ms. SOTO forcefully.
19. Ms. SOTO was arrested and spent approximately 72 hours in the defendants' custody as a result of this unlawful arrest.
20. Upon her arrest, Ms. SOTO's shoes and coat were confiscated, and maliciously withheld from her so that she had no shoes or coat during her arraignment or upon her release.
21. As a result of the individual defendant's use of excessive force against her, Ms. SOTO experienced pain and injury.
22. All charges against Ms. Soto were dismissed.

**FIRST CLAIM FOR RELIEF
DEPRIVATION OF RIGHTS
UNDER THE UNITED STATES CONSTITUTION THROUGH 42 U.S.C. § 1983
(Against all Defendants)**

23. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.
24. Defendants, under color of state law, subjected the plaintiff to the foregoing acts and omissions, thereby depriving plaintiff of her rights, privileges and immunities secured by the Fourth and Fourteenth Amendments to the United States Constitution, including, without limitation, deprivation of the following constitutional rights: (a) freedom from unreasonable seizure of her person - including the excessive use of force; (b) freedom from arrest without

probable cause; (c) freedom from false imprisonment; (d) freedom from the lodging of false charges against her by police officers; and (e) freedom from having police officers fabricate evidence against her.

25. Defendants' deprivation of plaintiff's constitutional rights resulted in the injuries and damages set forth above.

SECOND CLAIM
MONELL CLAIM AGAINST DEFENDANT CITY – 42 U.S.C. § 1983
(Against the City of New York)

26. Plaintiff incorporates by reference the allegations set forth in all preceding paragraphs as if fully set forth herein.

27. Sgt. EDDIE TSANG's, P.O. HAILYN OLIVARES', P.O. JEAN-PIERRE, and P.O. JOHN DOE's 1-4's acts and omissions described above were carried out pursuant to the CITY's overlapping customs and practices which were in existence on November 9, 2012 and were engaged in with the full knowledge, consent, and cooperation and under the supervisory authority of the CITY and its agency, the NYPD.

28. The acts complained of were carried out by Sgt. EDDIE TSANG, P.O. HAILYN OLIVARES, P.O. JEAN-PIERRE and P.O. JOHN DOE's 1-4 in their capacities as police officials pursuant to customs, policies, usages, practices, procedures and rules of the CITY and the NYPD, all under the supervision of ranking officers of the NYPD.

29. The aforementioned custom and practice of the CITY and the NYPD include, but are not limited to falsely swearing out criminal complaints, and/or lying and committing perjury during sworn testimony in order to meet productivity goals.

30. The existence of aforesaid unconstitutional customs and policies may be inferred from repeated occurrences of similar wrongful conduct, as documented in the following civil rights actions filed against the CITY and analogous prosecutions of police officers:

- a. People v. Alicea, 00012-2013 (Sup. Ct., N.Y. Co.) (NYPD sergeant convicted of 10 felony counts of filing a false document and one misdemeanor count of official misconduct, for falsely swearing he observed two men engaged in a drug transaction, when video evidence clearly showed that the two arrestees had no contact; in response to the indictment, Manhattan District Attorney Cy Vance stated “We rightfully trust our police officers to report their activities truthfully. Those who do not erode the public’s trust in law enforcement... To falsely accuse anyone of a drug sale is not only unacceptable, it is a crime.”);
- b. People v. Arbeedy, 06314-2008 (Sup. Ct., Kings Co.) (NYPD narcotics detective found guilty of planting drugs on two innocent civilians; former undercover NYPD narcotics officer, Steve Anderson, testifies that fellow narcotics officers routinely maintained a stash of narcotics to plant on innocent civilians in order to help those officers meet their arrest quotas; Mr. Anderson testified concerning the NYPD’s practice of “attaching bodies” to the narcotics to make baseless arrests, stating: “It was something I was seeing a lot of, whether it was from supervisors or undercovers and even investigators. Seeing it so much, it’s almost like you have no emotion with it. The mentality was that they attach the bodies to it, they’re going to be out of jail tomorrow anyway, nothing is going to happen to them anyway. That kind of came on to me and I accepted it — being around that so long, and being an undercover”; the presiding judge, Justice Reichbach, stated: “Having been a judge for 20 years, I thought I was not naïve regarding the realities of narcotics enforcement. But even the court was shocked, not only by the seeming pervasive scope of the misconduct, but even more distressingly by the seeming casualness by which such conduct is employed”);
- c. Schoolcraft v. City of New York, 10-CV-6005 (RWS) (S.D.N.Y.) (police officer who exposed a precinct’s policies and practices of illegal quotas for the issuance of summonses and arrests, falsifying evidence and suborning perjury alleges he was arrested and committed to a psychiatric facility in retaliation for exposing said policies and practices to the press);
- d. Bryant v. City of New York, 22011/2007 (Sup. Ct., Kings Co.) (jury declares that NYPD officers acted pursuant to a City policy regarding the number of arrests officers were expected to make that violated plaintiff’s constitutional rights and contributed to her arrest);²

² For a description of this case and ultimate settlement, see, Oren Yaniv, *Court rules that cops do use quotas, woman injured in 2006 arrest settles for \$75,000*, N.Y. Daily News, Feb. 19, 2011, available at http://www.nydailynews.com/news/ny_crime/2011/02/19/2011-02-19_court_rules_that_cops_do_use_quotas_woman_injured_in_2006_arrest_settles_for_750.html.

31. Furthermore, the existence of the aforesaid unconstitutional customs and policies,

specifically with regard to “productivity goals,” may be further inferred from the

following:

- a. Former Deputy Commissioner Paul J. Browne has repeatedly admitted that NYPD commanders are permitted to set “productivity goals.”³
- b. An NYPD transit lieutenant was captured on tape telling officers to make more arrests to meet a captain's order and do more work if they want overtime assignments. “All they care about is ... summonses and arrests and 250s,” Lt. Janice Williams said, using police jargon for the NYPD Stop, Question and Frisk reports. She added, “The bottom line is everybody’s individual activity is being looked at.” Later in the recording - made during a roll call in 2010 at Transit District 34 in Coney Island - she said only officers with “good productivity” will get the opportunity to work overtime. She also said Capt. James Sheerin wanted every officer to make at least one arrest per month - up from the previous order of one every three months - because crime had spiked and arrest totals were lower than other transit districts. “He wants everyone to get in the mindset that there’s no more collar a quarter,” Williams said.⁴
- c. NYPD Officer Adil Polanco has asserted that his command, the 41st Precinct, regularly requires officer to make at least “one arrest and twenty summonses” per month. P.O. Polanco’s allegations were confirmed by an audiotape obtained by the media. The contents of the tape reveal that these quotas are enforced through coercion and threats of job loss, to wit, a patrol supervisor at the 41st Precinct is overheard saying: “If you think one and 20 is breaking your balls, guess what you’ll be doing. You’re gong (sic) to be doing a lot more, a lot more than what they’re saying.” The tape also reveals that another patrol supervisor chimed in and told the officers: “Next week, 25 and one, 35 and one, and until you decide to quit this job and go to work at a Pizza Hut, this is what you’re going to be doing till (sic) then.”⁵
- d. The New York Daily News obtained and published two (2) internal memos which were posted inside the roll-call room at the NYPD’s 77th Precinct. The memos specifically instructed officers about “number of tickets to give drivers for cell phone, seat belt, double-parking, bus stop, tinted windows and truck route violations” they

³ Jim Hoffer, *NYPD Officer claims pressure to make arrests*, WABC-TV Eyewitness News, March 2, 2010, available at <http://abclocal.go.com/wabc/story?section=news/investigators&id=7305356> (“Police Officers like others who receive compensation are provided productivity goals and they are expected to work”).

⁴ Rocco Parascandola, *NYPD Lt. Janice Williams captured on tape pushing for more busts, but brass says there’s no quotas*, N.Y. Daily News, March 3, 2011, available at http://www.nydailynews.com/ny_local/2011/03/03/2011-03-03_nypd_lt_janice_williams_captured_on_tape_pushing_for_more_busts.html.

⁵ *Id.*

were expected to issue. The memos remained posted for several weeks inside the roll-call room until the media began inquiring.⁶

- e. Responding to a query from a civilian who was cited on consecutive days in November of 2009 for allegedly occupying more than one seat on the New York City subway, the officer responded: "Recently we've been told to write tickets instead of give warnings for this type of thing." The officer explained that they needed to meet quotas.⁷
- f. In December of 2010 and in response to the pressure from their supervisors to write baseless summonses pursuant to the policy and practice of "quotas," police officers at the 79th Precinct considered organizing a so-called "daylong summons boycott." As one (1) officer at the precinct explained, "Nobody feels this is right, asking us to write summonses just to meet a quota."⁸
- g. In response to the planned summons-boycott at the 79th Precinct, on December 13, 2010, Deputy Chief Michael Marino marched into the precinct at roll call with a deputy inspector and read officers the riot act. "Just try it," a police source quoted Marino as saying. "I'll come down here and make sure you write them." Marino also vowed to transfer people, like he did when he was the commanding officer of the 75th Precinct in East New York.⁹
- h. Capt. Alex Perez, the second in command at the NYPD's 81st Precinct, testified in a civil matter before a Brooklyn Supreme Court jury that officers are likely to get poor performance ratings if they have few arrests, conceding that that arrest numbers are a factor in evaluating an officer's performance.¹⁰ Ultimately, the jury in that case ruled

⁶ James Fanelli, Cops at Brooklyn's crime-ridden 77th Precinct told to meet quotas for moving violations, memos say, N.Y. Daily News, Nov. 8, 2010, *available at* http://www.nydailynews.com/ny_local/2010/11/08/2010-11-08_cops_told_to_meet_quotas.html.

⁷ Tom Namako and Kirsten Fleming, *Nighttime Riders in Big Sit Fit*, The New York Post, December 26, 2009, *available at* http://www.nypost.com/p/news/local/space_hogs_lapped_on_empty_subways_m7iRA9b4E9aYPuGvy5OO.

⁸ Rocco Parascandola, *Irate cops at 79th Precinct in Bedford-Stuyvesant threaten boycott over quotas*, N.Y. Daily News, Dec. 12, 2010, *available at* http://www.nydailynews.com/news/ny_crime/2010/12/12/2010-12-12_bklyn_cops_threaten_tixwriting_boycott.html#ixzz180Q0JW7t.

⁹ Rocco Parascandola, *Deputy Chief Michael Marino threatens cops at the 79th Precinct who want to go on summons strike*, N.Y. Daily News, Dec. 15, 2010, *available at* http://www.nydailynews.com/ny_local/2010/12/15/2010-12-15_summons_strike_i_dare_ya_deputy.html.

¹⁰ William J. Gorta, *Brooklyn Mom's Suit Targets NYPD Arrest Quotas*, N.Y. Post, Feb. 15, 2011, at 6, *available on* Westlaw at 2011 WLNR 2986205; see also Oren Yaniv, *Capt. Links Arrests, Evaluation of Cops*, N.Y. Daily News, Feb. 15, 2011, at 20, also *available on* Westlaw at 2011 WLNR 2986205.

that the police had a policy "regarding the number of arrests officers were to make that violated plaintiff's constitutional rights and contributed to her arrest."¹¹

- i. The New York City Office of Collective Bargaining concluded that officers in Brooklyn's 75th Precinct were required to issue four (4) parking tickets, three (3) moving violation citations, three (3) "quality-of-life" summonses, make one (1) arrest and two (2) stop-and-frisks each month. Arbitrator Bonnie Siber Weinstock ruled that the NYPD maintained an illegal "summons quota for traffic violations in the precinct and by penalizing officers for failing to meet the stated number of traffic citations." She ordered the city to cease and desist from the practice.¹²
- j. Kieran Creighton, commander of the NYPD Housing Police Service Area 8 in the northern Bronx, was investigated for ordering officers to make a certain number of arrests each month. According to The New York Daily News:

The incident allegedly occurred in the spring when Creighton ordered at least eight members of an undercover anti-crime team to a meeting in Pelham Bay Park to berate them about an alleged lack of arrests, sources said.

"You can't make the nine collars a month, then we'll all have to go our separate ways," Creighton told the officers, according to an internal complaint obtained by The News.

Anything less than nine arrests would be a "personal slap in the face," Creighton allegedly said.

Creighton then told the cops to "finagle" the times of arrests so any overtime was paid for by a federally funded anti-drug program, the complaint alleges.

Unbeknownst to Creighton, one officer had his NYPD radio switched on - so the captain's 10 to 12 minute speech was broadcast to Bronx precincts in Morrisania and Schuylerville and taped by a 911 dispatcher.¹³

JURY DEMAND

¹¹ Oren Yaniv, *Court rules that cops do use quotas, woman injured in 2006 arrest settles for \$75,000*, N.Y. Daily News, Feb. 19, 2011, available at http://www.nydailynews.com/news/ny_crime/2011/02/19/2011-02-19_court_rules_that_cops_do_use_quotas_woman_injured_in_2006_arrest_settles_for_750.html.

¹² *New York City Ticket Quota Confirmed, Denied*, The Newspaper.Com, January 21, 2006, available at <http://www.thenewspaper.com/news/09/914.asp>; see also, Kirsten Cole, *NYPD's Bogus Little Secret: Parking Ticket Quotas -- Agents Often Caught Citing You For Violations You Didn't Commit*, WCBSTV.com, August 14, 2007, available at <http://wcbstv.com/topstories/parking.ticket.blitz.2.246533.html> (referring to the arbitrator's report).

¹³ Allison Gendar, *NYPD captain allegedly caught in arrest quota fixing*, The New York Daily News, November 14, 2007, available at http://www.nydailynews.com/news/ny_crime/2007/11/14/2007-11-14_nypd_captain_allegedly_caught_in_arrest_-1.html#ixzz0bFPBhRTz.

32. Plaintiff demands a trial by jury in this action on each and every one of her damage claims.

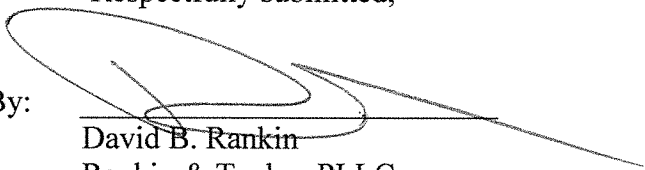
WHEREFORE, plaintiff demands judgment against the defendants individually and jointly and prays for relief as follows:

- a. That she be compensated for violation of his constitutional rights, pain, suffering, mental anguish, and humiliation; and
- b. That she be awarded punitive damages against the individual defendants; and
- c. That she be compensated for attorneys' fees and the costs and disbursements of this action; and
- d. For such other further and different relief as to the Court may seem just and proper.

Dated: New York, New York
July 7, 2014

Respectfully submitted,

By:



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